

STATE OF MAINE

Before the Grievance Commission:

Grievance Commission  
File No. 86-K-137  
89-K-56

BOARD OF OVERSEERS OF THE BAR, )  
  )  
                          Petitioner        )  
  )  
                          v.                    )  
  )  
GEORGE W. HESELTON                        )  
  )  
                          Respondent        )

REPORT OF FINDINGS AND  
CONCLUSIONS OF PANEL D  
OF THE GRIEVANCE  
COMMISSION

On February 25, 1992, pursuant to due notice, Panel D<sup>1</sup> of the Grievance Commission conducted a disciplinary hearing<sup>2</sup> open to the public according to Maine Bar Rule 7(e)(2), to determine whether grounds existed for the issuance of a reprimand or whether probable cause existed for the filing of an information with respect to alleged professional misconduct of Respondent George W. Heselton, Esq. as described in the petition dated November 5, 1990, filed by Assistant Bar Counsel of the Board of Overseers of the Bar.

The Board of Overseers of the Bar was represented by Karen G. Kingsley, Assistant Bar Counsel, and Respondent George W. Heselton, Esq. was represented by Gregory J. Farris, Esq. An answer had been duly filed on behalf of Respondent.

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<sup>1</sup>Marc V. Schnur substituted for Craig McEwen at the hearing.

<sup>2</sup> Pursuant to Maine Bar Rule 7(b)(2), the parties suggested and consented to have this proceeding conducted by two members of Panel D of the Grievance Commission, consisting of one lawyer member and one lay member of that duly-appointed panel.

Prior to the commencement of the hearing, Assistant Bar Counsel and Counsel for Respondent agreed without objection to the admission of Exhibits 1, 2, 3, 4, 5 , 6, 7, 8 and 9 as attached to the Petition. E. James Burke, Esq., (on behalf of Frederick Pushard) and Paul Dorey, were given notice by Assistant Bar Counsel of the hearing. No testimonial witnesses were presented. The parties - as primarily set forth in the pleadings - have stipulated as to the following facts, and the panel so finds:

#### FINDINGS OF FACT

Respondent was at all times relevant hereto, an attorney duly admitted to and engaging in the practice of law in the State of Maine, and is subject to the Maine Bar Rules.

1. Respondent had represented Frederick Pushard (Pushard) on some real estate transactions and minor business matters over a period of about twenty years.

2. Pushard owned a small grocery store on Route 201 in Gardiner, and in 1986 he decided to sell it.

3. Pushard negotiated a sale with the son of a friend, Herbert Giandrea, Jr. (Giandrea), at which time the price and terms of the sale were agreed upon solely between the parties.

4. Pushard called Respondent and gave him a brief outline of the terms of the agreement and asked that he draw up the paperwork.

5. Subsequently, the documentation was changed as Giandrea attempted to purchase the store with a succession of partners, the last of which was Leroy Ellison (Ellison).

6. In each case Respondent was instructed by Pushard to draft the appropriate documents.

7. Although Giandrea and Pushard were aware that each had used Respondent's services previously, Respondent did not affirmatively disclose such relationship to Pushard.

8. Ellison had contacts with a financing company in Massachusetts called P & M Associates (P & M) through which he arranged financing for the purchase of Pushard's store with terms of a \$50,000 first mortgage through P & M.

9. Respondent had previously represented Giandrea in other real estate transactions involving Ellison and P & M, but he did not disclose those transactions to Pushard.

10. The note with initial interest rate of 12% contained penalty provisions that resulted in interest rates as high as 35% upon default. The Note and the Mortgage to be signed by Giandrea as well as the UCC financing statement were prepared by P & M and signed by Giandrea in Massachusetts.

11. Respondent prepared the Warranty Deed and a note and mortgage for the secondary financing by Pushard.

12. Respondent made no inquiry as to the terms and conditions of the first mortgage, and he never saw the note relating thereto.

13. Respondent received the mortgage and the UCC financing statement from P & M and recorded them at the Kennebec County Registry of Deeds.

14. Respondent did not communicate to Pushard the extent of the risk of this transaction given the \$50,000 first mortgage at such a high interest rate.

15. In a separate legal matter Respondent did a title search on the Litchfield Country Store (owned by Dennis and Sharon Tilton) for Paul and Barbara Dorey (the Doreys) who wished to purchase the store.

16. The Doreys were associated with Ellison in his capacity as a financial advisor and the sale was being transacted through a real estate brokerage.

17. The sale was to be financed through P & M, and Respondent forwarded the title search to that organization.

18. Although the original sales price was \$300,000, at the closing the sales price had been increased to \$500,000 and new closing documents were prepared by Respondent to reflect that increase.

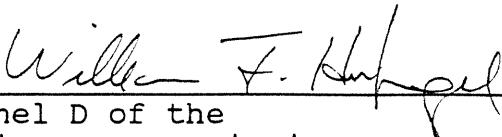
19. The parties agree that Respondent's conduct with respect to his representation of Pushard was in violation of M. Bar R. 3.4(a) and 3.6(a)(2).

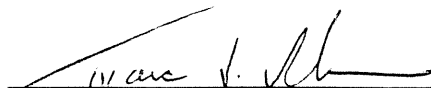
## CONCLUSION

This panel concludes, and Respondent admits that he failed to make the required disclosures about his relationships with other parties to the real estate transaction involving his client Frederick Pushard and that he failed to carefully examine all the terms of the transaction in order to properly protect Pushard's interest.

The panel concludes that the appropriate disposition Grievance Commission File No. 86-K-137 is that Respondent be, and he hereby is reprimanded for violating Maine Bar Rule 3.4(a) and 3.6(a)(2) as established in the Findings of Fact discussed in this Report. With respect to Grievance Commission File No. 89-K-56, the panel dismisses the complaint but suggests that Respondent's performance of the title search for the Doreys and subsequent drafting of documents could lead one to conclude that he was representing them in their purchase of the store and as such owed them a greater duty of care.

Dated this 25th day of February, 1992.

  
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Panel D of the  
Grievance Commission  
William H. Hufnagel, Chair

  
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Marc V. Schnur